

DISTRICT COURT, JEFFERSON COUNTY,  
STATE OF COLORADO  
100 Jefferson County Parkway,  
Golden, Colorado 80419  
Telephone: 303-271-6215

**Plaintiff:** SOLTERRA LLC, a Colorado limited liability company

**v.**

**Defendants:** FOSSIL RIDGE METROPOLITAN DISTRICT NO. 1, a quasi-municipal corporation and political subdivision of the State of Colorado; FOSSIL RIDGE METROPOLITAN DISTRICT NO. 2, a quasi-municipal corporation and political subdivision of the State of Colorado; and FOSSIL RIDGE METROPOLITAN DISTRICT NO. 3, a quasi-municipal corporation and political subdivision of the State of Colorado.

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Case No. 2022CV31409

Division: 1

**NOTICE OF NON-RESPONSE REGARDING DEFENDANTS' PARTIAL MOTION TO DISMISS PURSUANT TO C.R.C.P. 12(b)(5)**

Plaintiff Solterra LLC, a Colorado limited liability company (“Solterra”), through its counsel, Kutak Rock LLP, hereby submits the following Notice of Non-Response (“Notice”) and states as follows:

1. Solterra filed the Complaint in this matter on December 6, 2022.
2. On January 13, 2023, Defendants Fossil Ridge Metropolitan District No. 1, Fossil Ridge Metropolitan District No. 2, and Fossil Ridge Metropolitan District No. 3 (collectively, “FRMD”) filed a Partial Motion to Dismiss Pursuant to C.R.C.P. 12(b)(5) (“Motion to Dismiss”).
3. On February 2, 2022, Plaintiff filed an unopposed motion to extend its deadline to respond to the Motion to Dismiss. On February 8, 2022, this Court granted the motion to extend, extending the response date to February 17, 2022.
4. Pursuant to C.R.C.P. 15(a), “[a] party may amend [its] pleading once as a matter of course at any time before a responsive pleading is filed ....”
5. FRMD’s Motion to Dismiss is not a “responsive pleading” under C.R.C.P. 15(a). *Macurdy v. Faure*, 176 P.3d 880, 883 (Colo. App. 2007) (citing *Fladung v. City of Boulder*, 438 P.2d 688, 690 (Colo. 1968)); *Davis v. Paolino*, 21 P.3d 870, 873 (Colo. App. 2001). As a result, Solterra is permitted to file an amended complaint pursuant to C.R.C.P. 15(a) in lieu of responding to FRMD’s Motion to Dismiss. *See Grear v. Mulvihill*, 207 P.3d 918, 921-22 (Colo. App. 2009) (holding that trial court erred by treating amended complaint as “improper” and by granting motion to dismiss based on original complaint).
6. Based on the foregoing case law, Solterra files concurrently herewith its First Amended Complaint rendering moot FRMD’s Motion to Dismiss.

7. In electing to file its First Amended Complaint, Solterra has not conceded and is not conceding any of the arguments presented by FRMD in the Motion to Dismiss and reserves all rights, arguments, and defenses it has in the event FRMD elects to file a motion to dismiss the First Amended Complaint.

Respectfully submitted this 8<sup>th</sup> day of February, 2023.

KUTAK ROCK, LLP

*s/ Neil L. Arney*

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Mia K. Della Cava, #39861

*Attorneys for Plaintiff Solterra LLC*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 8<sup>th</sup> day of February, 2023, the foregoing **NOTICE OF NON-RESPONSE REGARDING DEFENDANTS' PARTIAL MOTION TO DISMISS PURSUANT TO C.R.C.P. 12(b)(5)** was filed and electronically served upon all counsel of record via Colorado Courts E-Filing.

*s/ Edna Gray* \_\_\_\_\_  
Edna Gray